

Office of the Attorney General
State of Tennessee

*1 Opinion No. 98-094
April 28, 1998

House Bill 3026 regarding 911 numbers and addresses

The Honorable Frank Buck
State Representative
Suite 32, Legislative Plaza
Nashville, TN 37243-0140

QUESTION

House Bill No. 3026 proposes to require addresses held with unpublished telephone numbers, or addresses otherwise collected or compiled and in the possession of **emergency communications** districts, to be made available upon written request to any county election commission for the purposes of compiling a voter mailing list for a respective county. If passed, would this legislation violate any state or federal statutes?

OPINION

It is the opinion of this Office that if House Bill No. 3026, as amended, is passed, it would not violate any state or federal statutes.

ANALYSIS

House Bill No. 3026, as amended, provides as follows:

Tennessee Code Annotated, Section 10-7-504(e), is amended by inserting the following language at the end of the subsection:

Provided, however, addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of **emergency communications** districts created pursuant to title 7, chapter 86, shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county. *

You have asked whether this proposed legislation would violate any state or federal statutes, and in particular 18 U.S.C. § 2703.

With regard to state statutes, the courts have recognized the legislature's prerogative to declare this State's policy with regard to public records. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986); *Thompson v. Reynolds*, 858 S.W.2d 328 (Tenn. Ct. App. 1993). Under the Public Records Act, all state, county,

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The quoted proposed statutory language was enacted into law in substantially the same form

and municipal records are open for personal inspection by any citizen of Tennessee, unless otherwise provided by state law. Tenn. Code Ann. § 10-7-503 (Supp. 1997). An **emergency communications** district created pursuant to Tenn. Code Ann. §§ 7-86-101, et seq., is considered to be a municipality under Tenn. Code Ann. § 7-86-106. Thus, the records of such a district are open for personal inspection unless state law provides otherwise.

H.B. 3026, as amended, would require that addresses held with unpublished telephone numbers or otherwise collected or compiled and in the possession of **emergency communications** districts be made available upon request to county election commissions. As noted above, **emergency communications** district records are municipal records subject to public inspection unless otherwise provided by state law. If H.B. 3026 is enacted, it would not be inconsistent with or violate any state law.

Furthermore, requiring the release of these records upon request to a county election commission would not violate any federal statute or constitutional provision [FN1], including 18 U.S.C. § 2703. That statute is part of the federal Electronic Communications Privacy Act, 18 U.S.C.A. §§ 2701, et seq., which bars unlawful access to stored electronic communications. Section 2701 makes it a crime, punishable by a fine and/or imprisonment, to

*2 (1) intentionally access[es] without authorization a facility through which an electronic communication service is provided; or

(2) intentionally exceed[s] an authorization to access that facility and thereby obtain[s], alter[s] or prevent[s] authorized access to a wire or electronic communication while it is in electronic storage in such system . . .

Section 2702 prohibits a person or entity providing an electronic communication service to the public from knowingly divulging to any person or entity the contents of a communication while in electronic storage by that service, except under certain enumerated circumstances. One such circumstance is found in § 2703, which sets forth the requirements for governmental access to the contents of an electronic communication that is in electronic storage in an electronic communications system.

Under the **Emergency Communications** District Law, Tenn. Code Ann. §§ 7-86- 101, et seq., an **emergency communications** district is a "municipality" or public corporation authorized to create an **emergency communications** service ("911 service") and to subscribe to the appropriate telephone services from a service supplier to establish 911 service. Tenn. Code Ann. §§ 7-86-106 & - 107. Thus, an **emergency communications** district is not an entity that provides an electronic communication service to the public and/or that electronically stores wire or electronic communications and, therefore, the above cited provisions of the Electronic Communications Privacy Act are not applicable to it.

Accordingly, it is the opinion of this Office that the proposed legislation, if passed would not violate any state or federal laws.

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[FN1]. In *Kallstrom v. City of Columbus*, 136 F.3d. 1055 (6th Cir. 1998), the United States Court of Appeals for the Sixth Circuit held that a city violated the due process rights of certain undercover police officers when it released addresses and other information from their personnel files to an attorney representing the defendants in a criminal case arising out of an undercover investigation in which the officers had participated. Although the information was not confidential under Ohio's public records law, the Court held that the city was required to give notice and an opportunity to be heard before disclosing the information in circumstances where they knew or should have known that releasing the information substantially increased the risk of the personal safety of the officers and their families. The facts of this case would distinguish it from a release of addresses by an **emergency communications** district to a county election commission, and thus, we do not think the E-911 district would need to give notice and opportunity for hearing before releasing addresses to a county election commission in order to avoid a federal constitutional violation.

Tenn. Op. Atty. Gen. No. 98-094, 1998 WL 227416 (Tenn.A.G.)

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